

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CONOCOPHILLIPS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB No. 12-101
)	(Permit Appeal NPDES)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 11, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a SUPPLEMENT TO THE RECORD, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: *Rachel R. Medina*
Rachel R. Medina
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 11, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on April 11, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and SUPPLEMENT TO THE RECORD upon the persons listed on the Service List.



RACHEL R. MEDINA
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

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Keller, Al

From: Williams, Deborah
Sent: Friday, July 22, 2011 4:24 PM
To: Rabins, Jaime; Keller, Al; LeCrone, Darin; Sofat, Sanjay; Mosher, Bob
Subject: ConocoPhillips
Attachments: 20110720111642508.pdf; BDTMemo.docx

I looked over this letter from ConocoPhillips and they do a fairly good job of summarizing the issues we are grappling with in this permit. Also, they clear up the unresolved matter of the fact that their application and prior correspondence may not have actually mentioned that they wanted a mixing zone for mercury.

Sanjay had asked me to give some suggestions on how we need to proceed in this case. I've attached a draft memo that tries to give a general roadmap. If we feel we have sufficient information to make and document a decision, I think the best course of action is to finalize the permit promptly and let the chips fall where they may. Fortunately ConocoPhillips did not send us a bunch of new documents that we need to consider before making a decision.

Let me know if you have questions or can use additional help.

Thanks,

Debbie

Sanjay K. Sofat
Division Manager
Division of Water Pollution Control
Bureau of Water
Illinois EPA
1021 North Grand Ave. East
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Phone: 217-558-2012
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-----Original Message-----

From: Milner, Dawn R. [mailto:dmilner@mcguirewoods.com]
Sent: Wednesday, July 20, 2011 11:38 AM
To: Sofat, Sanjay
Cc: Rieser, David L.; Carvalho, Donna H. (LDZX); Jay.D.Rankin@conocophillips.com
Subject: RE: ConocoPhillips

Please find the attached letter from David Rieser. Thank you.

**ATTORNEY WORK PRODUCT/PRIVILEGED AND CONFIDENTIAL
DRAFT**

To: Sanjay Sofat
From: Deborah J. Williams
Date: July 22, 2011
Re: ConocoPhillips

The purpose of the memo is to develop a road map for making a final determination on ConocoPhillips' permit renewal and mixing zone determination. Keep in mind that I have not reviewed the permit record and these comments are intended to be "big picture" in nature.

Based on the meeting held with the Agency, ConocoPhillips argues that they are eligible for a mixing zone for the parameter mercury in its discharge based on the fact the mixing zone regulations do not provide different standards for bio-accumulative chemicals of concern and the fact that they have sufficient dilution with the receiving stream to justify a mixing zone for other parameters.

Section 302.208(c) provides that "The human health standard (HHS) for the chemical constituents listed in subsection (f) shall not be exceeded when the stream flow is at or above the harmonic mean flow pursuant to Section 302.658 nor shall an annual average, based on at least eight samples, collected in a manner representative of the sampling period, exceed the HHS except as provided in subsection (d)." Subsection (d)(3) of that Section provides that "3) The HHS shall not be exceeded outside of waters in which mixing is allowed pursuant to Section 302.102."

In making a determination of whether mixing is available to a particular discharger, Section 302.102(a) provides an important prerequisite to the use of mixing or establishment of a mixing zone:

Whenever a water quality standard is more restrictive than its corresponding effluent standard, or where there is no corresponding effluent standard specified at 35 Ill. Adm. Code 304, an opportunity shall be allowed for compliance with 35 Ill. Adm. Code 304.105 by mixture of an effluent with its receiving waters ***provided the discharger has made every effort to comply with the requirements of 35 Ill. Adm. Code 304.102***

Prior to an evaluation by the Standards Unit of whether mixing is available in the receiving stream or what size of mixing zone can be established under the remaining provisions in Section 302.102, the Permit Section should make the initial determination of whether the facility has met the requirements of Section 304.102.

The complete language of Section 304.102 is as follows:

Section 304.102 Dilution

- a) Dilution of the effluent from a treatment works or from any wastewater source is not acceptable as a method of treatment of wastes in order to meet the standards set forth in this Part. Rather, it shall be the obligation of any person discharging contaminants of any kind to the waters of the state to provide the best degree of treatment of wastewater consistent with technological feasibility, economic reasonableness and sound engineering judgment. In making determinations as to what kind of treatment is the "best degree of treatment" within the meaning of this paragraph, any person shall consider the following:
 - 1) What degree of waste reduction can be achieved by process change, improved housekeeping and recovery of individual waste components for reuse; and
 - 2) Whether individual process wastewater streams should be segregated or combined.
- b) In any case, measurement of contaminant concentrations to determine compliance with the effluent standards shall be made at the point immediately following the final treatment process and before mixture with other waters, unless another point is designated by the Agency in an individual permit, after consideration of the elements contained in this section. If necessary the concentrations so measured shall be recomputed to exclude the effect of any dilution that is improper under this Section.

Discussions with ConocoPhillips regarding the source of mercury in its wastestream have already focused on some of the concepts in this regulation. As suggested in subsection (a)(2), ConocoPhillips has attempted to look at whether certain wastestreams are the source of mercury and whether those wastestreams could be treated individually. ConocoPhillips has claimed this cannot be done. The Bureau should make an independent determination of whether it is feasible to segregate mercury wastestreams in this case or whether end of process treatment is the only available treatment option.

ConocoPhillips may also have done an analysis under subsection (a)(1) of whether mercury reductions can be achieved through a waste reduction strategy. If so, the Bureau should consider whether any appropriate waste reduction measures were not considered or implemented that should have been.

Best Degree of Treatment Factors

Section 304.102 provides three factors for "best degree of treatment of wastewater." Such treatment must be consistent with technical feasibility, economic reasonableness and sound engineering judgment. With regard to "technical feasibility" and "sound engineering judgment," the analysis should begin with the permit reviewer. In this case, the permit reviewer has the

benefit of design and pilot studies conducted by the facility to determine what technologies are available and what mercury reductions these technologies can achieve. If this information was not available, or if it is inadequate to make a conclusion, the permit record may need to be supplemented with additional research by the permit reviewer or supplemental information from the facility.

If the Agency determines that readily available and effective technologies for mercury treatment that are consistent with sound engineering judgment will achieve mercury reductions, the only remaining consideration is whether these technologies are economically unreasonable. It is not entirely clear what methodology should be used for this economic reasonableness determination, but it is likely to be case-by-case determination based on a variety of factors including: level of pollutant reductions achieved relative to the cost, the significance (environmental benefit) of those reductions, the ability of the facility to absorb these costs, etc. I have not reviewed the 2008 anti-degradation study referred to by ConocoPhillips, but it seems possible that study might have relevant economic information the Permit Section and Standards Unit will need to consider in making an economic reasonableness decision.

As might be expected from the title of this Section, most disputes before the Board involving Section 304.102 have considered whether a facility is able to use dilution to comply with its final effluent limitations. I reviewed the few cases in which the courts have interpreted this provision and a number of these Board cases. The Board has said that "allowed mixing is never to be used as a substitute for technically feasible and economically reasonable treatment; or put more colloquially, "in-stream dilution is not the solution to pollution." *IBP v. Illinois EPA*, PCB 93-179 (1996). However, the Board will likely make its own determination as to whether it believes BDT has been achieved and will not give too much deference to the Agency's decision. Also, the Board will probably allow ConocoPhillips to supplement the record later with additional information as to why they believe they have met BDT. But if the Agency does a thorough job of documenting that treatment exists that will reduce mercury levels that is not implemented at the facility, the Agency may be successful in requiring mercury reductions from ConocoPhillips.

Rabins, Jaime

From: Mosher, Bob
Sent: Thursday, September 01, 2011 11:51 AM
To: Rabins, Jaime
Subject: RE: ConocoPhillips

See red below.

Bob Mosher
Water Quality Standards Unit, Division of Water Pollution Control
Illinois EPA
1021 North Grand Ave. E.
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217/558-2012
217/782-5549 (Fax)

From: Rabins, Jaime
Sent: Thursday, September 01, 2011 9:28 AM
To: Mosher, Bob
Subject: FW: ConocoPhillips

Bob,

Deb has reviewed the permit and identified several potential issues.

1. Review special condition 20 for the following:
 - a. Mercury does not need to be included because the permit limits the discharge at the WQ standard correct? **Correct**
 - b. If temperature which was found not to have a reasonable potential is included in the condition why isn't manganese which was recently found not to have a reasonable potential? **Any parameter that does not meet WQSs at end-of-pipe (has RP) needs to be mentioned in the mixing zone condition. My January 18, 2011 e-mail to you recommends no limit for manganese because of no RP.**
 - c. Fecal coliform is proposed to be limited at the effluent standard which is above the WQ standard. Should it be included? **Yes**
 - d. Confirm that nickel is correctly referenced in the below condition. **The last thing I have that looked at this was the June 12, 2008 WQBEL memo. Should we look at recent monitoring data? If we are going with existing decisions, then they have RP to exceed the acute Ni WQS and SP #20 is correct for nickel.**
 - e. What about sulfides and dissolved oxygen? **We have no WQS for sulfides, so no, do not include. We always assign a DO limit to meet the WQS at end-of-pipe. No mixing is ever given.**

SPECIAL CONDITION 20. The Agency has reviewed a mixing zone delineation study conducted by the permittee on the Mississippi River in the vicinity of this effluent outfall dated October, 2007. From the results of that study and the Agency's own modeling, it is recognized that adequate mixing exists in compliance with 35 Ill. Adm. Code 302.102 for the following parameters: pH, ammonia, phenols, chloride, chromium (Hexavalent), sulfate, nickel, temperature and available cyanide. Of these parameters, a zone of initial dilution is recognized for acute whole effluent toxicity, hexavalent chromium, ammonia, nickel, and available cyanide. The limits given for these parameters were established to result in compliance with the water quality standards of 35 Ill. Adm. Code Part 302 outside of these mixing zones and zones of initial dilution. All parameters known to be present in this effluent at levels above water quality standards are listed above.

2. Do you have the submittal from ConocoPhillips which shows that the ultrafiltration treats mercury to level below the WQ standard. This was passed around during the meeting we had with Deb, Al, Sanjay a month or two ago? **Yes, it's in the form of graphs and PP slides.**

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3. What is the name of the affordability guidance? **Interim Economic Guidance for Water Quality Standards EPA-823-B-95-002**

Jaime Rabins

Environmental Protection Engineer, Industrial Unit
Permit Section
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Illinois Environmental Protection Agency

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Jaime.Rabins@Illinois.gov

From: Williams, Deborah
Sent: Tuesday, August 30, 2011 8:54 AM
To: Rabins, Jaime; Mosher, Bob; LeCrone, Darin; Keller, Al; Heacock, Dan
Cc: Sofat, Sanjay
Subject: ConocoPhillips: Attorney/Client privilege

I reviewed Jaime's file for the ConocoPhillips permit renewal and I'd like to summarize the areas I've identified that we should try to tighten up or expand upon before the permit is issued. Don't try to send email responses to me on these items. But please do your best to assist Jaime with the pieces you are able to help add to the record and, if necessary, we can schedule a meeting to discuss.

1. Mercury

- A. Conoco-Phillips attempts to incorporate the record from their 2009 permit modification into this permit renewal record. I don't think the whole record needs to be part of this decision, but they specifically point to 2 letters: 7/7/2008 and 11/14/2008 that should definitely be included in the record and reviewed again. The only other document we need to evaluate for inclusion is the 2008 Anti-degradation study. If they did not evaluate the cost or technology of treating for mercury, then it's probably not relevant. But if they did, we need include those portions of the study in the permit record for this decision.
- B. Mercury Progress reports and studies. The only info in the permit file right now about the company's investigation of mercury treatment are the power point summaries that were provided at the meetings with the company. The record needs to include the various reports they were required to provide under the old permit that serve as our basis for concluding it is technologically feasible to treat for mercury down to the water quality standard. Also, I believe it was discussed that Bob was provided some mercury data by the company. That data doesn't appear in the permit file.
- C. Jaime's notes point out that C-P has the burden of proof and they have not met that burden as to economic unreasonableness. However, taken at face value the cost of treatment will appear more expensive if it is not given some context. We should try to include in the file some of the publically available information that demonstrates a project of this size is easily affordable by the company.
- D. Jaime did not locate the affordability guidance that was referenced in our meetings with ConocoPhillips. If it's important to our decision to reference that memo, we should get him a copy or citation.
- E. If there is information in the progress reports that will help us, we should use it to dispute the conclusion that all waste streams need treatment as an example of inflation of cost figures by the company.

2. Smith Lake issue

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ConocoPhillips relies on a jurisdictional determination by the Corps to conclude that the Agency can't regulate discharges to Smith Lake. Our permit record relies on a memo from Bob Mosher to conclude Smith Lake is a water of the State.

We should supplement the record with facts that we would rely on to make this conclusion. If we think there is a surface discharge to the Mississippi, we could look for past inspection reports to make this conclusion or send out the inspector.

Another tactic would be to look into whether we have a 401 file on Smith Lake or whether we can contact the Corps for the supporting information they relied on to conclude that Smith Lake does not have a significant nexus with the Mississippi River.

If we don't have facts to support our decision, it would be preferable to go after the company for not getting an operating permit (with groundwater monitoring) for this treatment works rather than going forward without facts to rebut/overrule the Corps memo and risk a bad decision from the Board on such a controversial issue.

3. Special Condition 20. Jaime is going to check with Bob regarding Special Condition 20 and whether it needs any tweaking (with regard to manganese and/or nickel). I'd also like some feedback on whether the language is consistent with our mercury condition.

Thanks,
Debbie